

### **Rejection of Claims under 35 U.S.C. § 112**

The amendments to Claim 32 have rendered the rejection of Claim 32 moot. The consequential rejection of dependent Claims 39-41 and 56-58 has therefore also been rendered moot.

The amendment to Claim 32 has rendered the rejection of Claim 47 moot.

Claim 60 has been canceled, thus the rejection against Claim 60 has been rendered moot.

Claim 61 has been canceled, thus the rejection against Claim 61 has been rendered moot.

The amendment to Claim 59 has rendered the rejection of Claim 59, and the consequential rejection of dependent claim 62 moot.

In light of the amendments, the applicant respectfully requests that the rejection of the claims under §112 be withdrawn.

The Applicant wishes to introduce into the record an explanation. The base claims are no longer directed to method of preparation and use, rather only to a method of preparation. Therefore, the language of the claim no longer contains expressions regarding selection of a fraction, or whether the number of bacteria are representative, etc. However, this does not signify the Applicant has accepted the Examiner's arguments on these points; the broader scope of the claim after dropping the "use" limitation no longer requires a recitation of these elements. A particular exception is taken to the statements in regard to bacteria. There are four bacteria shown sensitive to the inventive concepts, two *E. coli* and two mycobacterium (*see* also discussion below, under §103). Given the commonality of *E. coli* as a model system, of *M. smegmatis* as a model for mycobacteria, and the tough to control nature and physical qualities of mycobacteria, the Applicant believes that an artisan skilled in the art would expect that the scope of the invention relates to method and compounds which control a broad section of the bacteria kingdom.

### **Rejection of Claims under 35 U.S.C. § 103(a).**

Claims 32, 39-41, 48-49, and 56-62 are rejected under 35 USC §103(a) as obvious over Frame *et al*, PRHSJ (1998) ("Frame publication," cited by Applicant in an IDS dated 6/24/2004), in light of Greenspan, in light of McMurry.<sup>1</sup>

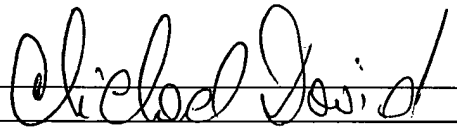
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<sup>1</sup> Claims 33, 60, and 61 are now canceled; Claim 47 was apparently free of prior art.

The Applicant respectfully traverses. The Examiner had explained that the Frame publication was brought forth as an addition to the previous objection under §103 because the amendments to claims 32 and 59. *See* OA, second paragraph, page 8. However, the specific amendments the Examiner has referred to, i.e., “administration of the fraction to bacteria,” and “selecting a fraction having antimicrobial activity” are no longer recited in the claims. Moreover, the base claims now recite stigmastan -3,5,-diene and/or cobaltocene octamethyl. None of the references cited under §103 teach these elements. Therefore, these references in combination with the Frame publication or otherwise, do not make the claims obvious. As the Applicant has noted previously: the courts have repeatedly cautioned that obviousness can not be predicted on what is unknown. *See In Re Adams*, 363 F.2d 444, 150 USPQ 449 (CCPA 1966); *see also* 919 F.2d 688, 16 USPQ 2d 1897; 1922 (Fed. Cir. 1990) (en banc), certiorari denied 500 U.S. 904 (1991). The presence of these compounds in the M. Americana plant was not known.

Accordingly, the Applicant respectfully urges the withdrawal of the rejection under §103(a). It would appear that the claims are in condition of allowance. However, if the Examiner believes there are any remaining or newly arisen issues, the Applicant’s representative would very much appreciate a phone call from the Examiner, to discuss these issues at the earliest convenience of the Examiner.

Should the Examiner determine at any time during prosecution of this application that a telephone conversation with Applicant’s representatives would be useful to clarify or expedite matters, she is invited to call the undersigned.

Date: December 2, 2008	By:  Michael David Reg. No.: 44,642 Direct Tel. No.: (410) 347-9424
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***DONNA CHAMBERS***

A handwritten signature in cursive script that reads "Donna Chambers". The signature is written in dark ink and is positioned above a horizontal line.

Signature

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